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**Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council**

I write with reference to my letter of 10 April 2002 (S/2002/407).

The Counter-Terrorism Committee has received the attached supplementary report from Liechtenstein, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established
pursuant to resolution 1373 (2001)
concerning counter-terrorism

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## Annex

### Note verbale dated 24 June 2002 from the Permanent Mission of Liechtenstein to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Representative of the Principality of Liechtenstein to the United Nations presents her compliments to the Chairman of the Counter-Terrorism Committee established pursuant to resolution 1373 (2001) of the Security Council and has the honour to transmit a supplementary report on the implementation of resolution 1373 (2001) by Liechtenstein in response to the preliminary questions of the Committee (see enclosure).

The Permanent Representative of the Principality of Liechtenstein to the United Nations takes this opportunity to renew the assurances of her highest consideration to the Chairman of the Counter-Terrorism Committee established pursuant to resolution 1373 (2001) of the Security Council.

**Enclosure**

Introduction

1. Liechtenstein is pleased to continue its dialogue with the Counter-Terrorism Committee (CTC) on the implementation of Security Council resolution 1373 (2001). Liechtenstein continues to attach the highest importance to international cooperation in the fight against terrorism in all its forms and has significantly stepped up its efforts in this respect. The full implementation of Security Council resolution 1373 is a centerpiece of these efforts. Given its role as a financial center, Liechtenstein has pursued with determination the goal of ensuring that the financial center is not abused for the purpose of financing terrorism. Given the focus of resolution 1373 on the financing of terrorism, full and constructive cooperation with the CTC is of the highest importance. Liechtenstein has acquired significant expertise in areas relevant to the work of the CTC and is willing to share this expertise with other partners in the interest of achieving the common goal of eliminating terrorism in all its forms. In this respect, particular reference is to be made to the initiatives on benchmarking and best practices as outlined in the initial report and further developed since.

2. As stated on previous occasions, Liechtenstein firmly believes that the international community has an obligation to fully safeguard human rights in its fight against terrorism, as provided for under existing international law. While the CTC has been making important progress in its work on the implementation of Security Council resolution 1373, the human rights dimension of the matter warrants closer examination and increased attention from the international community.

3. The following information is provided in response to the letter of the Chairman of the Counter-Terrorism Committee (CTC) of 1 April and the preliminary questions contained therein. It is intended both to provide additional clarification to the CTC on issues contained in the first report of Liechtenstein (S/2001/1253) as well as information on relevant developments which have taken place since the submission of the first report.

   Sub-Para 1 (a):
   Have there already been convictions of natural or legal persons as listed in Art. 2 of the Due Diligence Act for "failure to report suspicion"? What are the penalties provided by law and what sentences, if any, have been handed down?

4. There have been no convictions so far for failure to report suspicion. However, punishment has been requested on the basis of suspicion pursuant to Article 15 of the Due Diligence Act in six proceedings during the years 2001 and 2002. The proceedings are pending before the Princely Court of Liechtenstein.

5. According to the Article 15(1)(e) of the Due Diligence Act, the failure to report suspicion is punishable by imprisonment of up to six months or by a fine of up to 360 per diem units.

Sub-Para 1 (b):
Please outline the legal framework which the Government of Liechtenstein intends to commission to comply fully with this Subparagraph?

6. The objective of the study commissioned by the Government of Liechtenstein was to review the existing legal framework and to identify and fill possible gaps in Liechtenstein legislation. On the basis of this study, the Government has recommended the following legislative measures:

- Definition of the new crime "Terrorist Association" (§ 278 b)
- Definition of the new crime "Terrorist Financing" (§278 d)
- Collective designation of terrorist crimes (§ 278 c)
- Extension of the definition of gang to "Criminal Association" (§ 278)

In accordance with the normal legislative process, the proposed legislative amendments will be circulated for consultation and will then be discussed by the Parliament on the basis of a draft law presented by the Government.

7. The Liechtenstein Criminal Code is modeled on the Austrian Criminal Code. The 2002 Draft Act on Amendment of the Criminal Code currently under discussion in Austria will also, to the extent possible, be incorporated into Liechtenstein law in order to maintain conformity of the two legal systems.

8. In addition to the definition of new crimes, modification and extension of existing definitions of crimes are recommended as follows:

- Taking terrorist associations into account with regard to confiscation of proceeds of crime and forfeiture (§§ 20, 20b)
- Extension of domestic jurisdiction according to § 64 of the Criminal Code to terrorist associations and terrorist financing
- Extension of the definition of money laundering (by expanding the list of predicate crimes and through the new § 278 d of the Criminal Code)

9. Furthermore, in the area of substantive criminal law in § 320 of the Criminal Code ("Support of a Party in a Foreign Armed Conflict"), the crime of "Arms Brokering" shall be included.

10. The objective of the proposed legislative measures is to improve the legal framework for combating terrorism in accordance especially with Security Council resolution 1373, as well as to implement the United Nations Convention against Transnational Organized Crime. Resulting amendments of organizational offenses are § 278 (Criminal Association), § 278 a (Criminal Organization), and § 278 b (Terrorist Association). Terrorist crimes are

defined in § 278 c. § 278 d punishes the intentional provision or collection of financial assets for committing terrorist acts.

Sub-Para 1(c):
According to the Report (Para 39), the Due Diligence Unit establishes the obligation of banks and other persons subject to this law "to report suspicions to the FIU, if the financial institution suspects its client to be connected to a criminal organisation or to have been involved in money laundering or in an act facilitating money laundering". After filing a Suspicious Transaction Report (STR) to the Financial Intelligence Unit (FIU) the affected assets are automatically blocked for a period of 10 working days upon submission of the STR (Para 45). Does the law authorise an immediate freezing of funds and other financial assets or economic resources following the submission of a STR by a foreign natural or legal person (including a foreign bank or a foreign government)?

Is the prosecutor or any other public authority in Liechtenstein authorised to order the freezing of funds etc. *proprio motu*, i.e. without having received prior notification from a bank etc, or upon request of foreign authorities?

11. Accounts are frozen by the investigating judge upon application of the prosecutor. Notification by a bank is not required. Accounts may always be frozen when a relevant suspicion arises in a proceeding. Reasons for suspicion may arise on the basis of investigations by the Liechtenstein police, a report of suspicion forwarded by the FIU, a foreign request for legal assistance, or any other information made available to the prosecutor's office.

Sub-Para 1 (d):
How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes to terrorist activities?

12. The scope of application of the Due Diligence Act is comprehensive: As soon as an association undertakes financial intermediary activities, it falls under the scope of the Due Diligence Act and must therefore fulfill all due diligence requirements. In addition, the general rules of the Criminal Code (Aiding and abetting a criminal association, aiding and abetting money laundering, etc.) always apply.

Sub-Para 2 (a):
Please outline the legal provisions prohibiting the trafficking and brokering of weapons to terrorists and their organizations.

Please outline the measures, both legislative and practical, preventing entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Liechtenstein, including in particular:

- the carrying out, within or from Liechtenstein, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and
- deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organizations?

13. In this context, please refer to § 165 (Money Laundering), § 278 a (Criminal Organization), § 279 (Armed Group), § 280 (Accumulation of Arms) and § 320 (Support of a Party in a Foreign Armed Conflict) of the Criminal Code.

14. In addition, this question is dealt with in §§ 62 – 64 of the Criminal Code. According to § 65(1) of the Criminal Code, criminal offenses committed abroad are punishable in Liechtenstein, if they are committed by a Liechtenstein citizen or a foreign citizen apprehended in Liechtenstein who may not be extradited to a foreign country for reasons other than the manner or nature of the offense. According to Article 11 of the Liechtenstein Law on Mutual Legal Assistance, extradition for prosecution is permissible for all offenses committed intentionally that are punishable by at least one year imprisonment according to the law of the requesting State and according to the law of Liechtenstein. In principle, this enables extradition to all States for all possible offenses connected to terrorism, regardless of the existence of bilateral treaties.

    Please also refer to Article 2(2) of the Due Diligence Act, according to which every person accepting foreign assets in a professional capacity is subject to the Due Diligence Act and must therefore fulfill all due diligence requirements contained in the Act, in particular the notification requirement and the requirement to report suspicious activities according to Article 9 of the Due Diligence Act.

    Sub-Para 2 (f):
    According to Art. 3 (1) of Liechtenstein's Legal assistance Law, a foreign request for mutual legal assistance may only be complied with if it can be guaranteed that the State making the request would comply with an identical request made by Liechtenstein (the principle of mutuality). According to Art. 3 (3) of the same law, if compliance with the principle of mutuality is doubtful, the Ministry of Justice is to be asked for advice. Please describe the practice of the Ministry of Justice in giving such advice, and provide an assessment on whether and how sub-paragraph 2 (f) of the Resolution will affect such advice in matters relating to terrorist acts.

    What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings relating to the financing or support of terrorist acts is required to be met, and how long does it actually take in practice to implement such a request?

15. No cases are known in which the Ministry of Justice has in the past been called upon to give advice concerning doubtful mutuality. Even when the old Law on Mutual Legal Assistance of 1993 was applied, only very few cases arose in which appellants claimed lack of mutuality on appeal. The majority of crimes committed abroad in these cases could be subsumed under crimes punishable in Liechtenstein, enabling mutual legal assistance to be rendered.

16. Subparagraph 2(f) can be fulfilled without reservations, since any foreign terrorist acts are also subject to judicial punishment in Liechtenstein. Accordingly, nothing stands in the way of granting legal assistance.

17. The duration of proceedings for international legal assistance in criminal matters may vary considerably from case to case. Liechtenstein authorities have no influence on whether and how many appeals are lodged. Liechtenstein authorities have been able to process previous requests for legal assistance relating to terrorist activities positively and fully within a few days or weeks. If all possible appeals are lodged against every judicial decision, the proceeding may take longer (e.g., a few months); in cases relating to terrorist activities, however, all Liechtenstein authorities are committed to processing requests without delay.

Sub-Para2(g):
Could Liechtenstein please provide the CTC with information on the mechanism for inter-agency cooperation between the authorities responsible for narcotics control, financial tracking and security with particular regard to the border controls preventing the movement of terrorists?

18. The Coordination Group on Terrorist Financing (established by decision of the Government on 31 October 2001), under the leadership of the FIU, coordinates cooperation among all primarily affected authorities in connection with the fight against terrorism and the financing of terrorism. The objective of the regularly convened meetings is to exchange information and especially to coordinate specific cases involving multiple authorities (see enclosed flow chart). In particular in the areas of narcotics and border control, the Liechtenstein police is the lead authority. The police has the necessary contacts at its disposal at the personal and technical levels (access to databases) in order to obtain requisite information without delay. The close cooperation between the Liechtenstein police and the FIU in the area of financial tracking is ensured by the agreement of 8 May 2001 between the police and the FIU governing the manner, scope, and speed of information exchange, as well as by regular contact with the liaison officer of the FIU to the police.

Sub-Para 3 (b):
According to Paragraph 36 of the report, the "new law on mutual legal assistance has made legal assistance pursuant to requests by foreign authorities easier and more practical"; in particular, the new law offers only four instead of, as previously, twelve means of appeal against a decision to grant legal assistance. Please explain what the four means of appeal are. To what extent will this impact upon the time it takes to provide legal assistance?

19. The new Law on Mutual Legal Assistance eliminates all means of appeal at the administrative level without substitute, with respect to both admissibility and transfer. The Ministry of Justice has been designated as the sole central authority, replacing the Legal

Service of the Government as the administrative authority of first instance. Decisions of the Ministry of Justice are not subject to appeal. The stages of appeal have been radically limited and are now only permissible in judicial proceedings. Decisions of the Princely Court (first instance) may be appealed to the Superior Court (second instance). If the second instance upholds the decision of the first instance, the decision may further be appealed to the Constitutional Court, if the appellant claims that the judicial decision has violated constitutionally guaranteed rights. Regarding the duration of the proceedings, please refer to the information submitted under subparagraph 2(f).

Sub-Para 3(c):
In Paragraphs 58 and 59 of the report, Liechtenstein stresses the importance of bilateral agreements on mutual legal assistance (It is understood that, in Liechtenstein, this term includes extradition). Please provide a list of the relevant agreements which Liechtenstein has concluded.

20. As paragraph 58 of the initial Liechtenstein report indicates, cooperation in the area of mutual legal assistance is rendered particularly on the basis of the Law on Mutual Legal Assistance, which replaces bilateral agreements or treaties if they do not exist. It should again be emphasized that the Liechtenstein Law on Mutual Legal Assistance enables authorities to render mutual legal assistance also to States with which Liechtenstein has concluded neither bilateral nor multilateral legal assistance agreements.

21. With regard to international legal agreements with other States, Liechtenstein foreign policy has in the past focused primarily on the conclusion of multilateral treaties developed in the framework of international organizations of which Liechtenstein is a member, particularly the Council of Europe and the United Nations. This has enabled cooperation with a great number of other States to be rendered on a uniform basis of international treaties. This approach has also been chosen in the area of mutual legal assistance. Bilateral agreements exceeding the scope of mutual legal assistance contained in multilateral treaties have been concluded between Liechtenstein and Austria. Negotiations with the United States are also underway concerning the conclusion of a bilateral mutual legal assistance treaty. With regard to the European Convention on Extradition, two supplemental agreements with the Netherlands and the United Kingdom should be mentioned, with which the territorial application of the Convention was extended. The following bilateral treaties are relevant (see enclosed full list):

- Treaty of 4 June 1982 between the Principality of Liechtenstein and the Republic of Austria supplementing the European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959 and facilitating its application (LGBl 1995 Nr. 223)
- Treaty of 4 June 1982 between the Principality of Liechtenstein and the Republic of Austria supplementing the European Convention on Extradition of 13 December 1957 and facilitating its application (LGBl 1983 Nr. 40)

- Agreement between the Principality of Liechtenstein and the Kingdom of the Netherlands concerning the extension of the European Convention on Extradition of 13 December 1957 to the Netherlands Antilles and Aruba (LGBl 1995 Nr. 224)
- Agreement between the Principality of Liechtenstein and the United Kingdom concerning the extension of the European Convention on Extradition of 13 December 1957 to the dependent territories of the United Kingdom (LGBl 1997 Nr. 62)

22. In addition, an agreement in the form of an exchange of notes (of 17 February/29 May 1958) was concluded between the Principality of Liechtenstein and the Federal Republic of Germany allowing direct transactions in civil and criminal matters between the justice authorities of the two countries.

23. The two following mutual legal assistance treaties are of almost no remaining significance in practice:

- Extradition treaty of 22 May 1936 between the Principality of Liechtenstein and the United States of America (LGBl 1937 Nr. 11)
- Extradition treaty of 5 August 1936 between the Principality of Liechtenstein and the Kingdom of Belgium (LGBl 1938 Nr. 3)

24. On the level of administrative assistance, the law governing the FIU (in force since 8 May 2002, see enclosure) enables the FIU to conclude bilateral Memoranda of Understanding (MOUs) with foreign FIUs. The FIU has concluded such an MOU with the FIU of Belgium; the elaboration of further MOUs with Switzerland, Monaco, Panama, and France is underway and should be concluded in the near future.

Sub-Para 3 (d):
Please provide a progress report on the ratification of those relevant international conventions and protocols relating to terrorism which Liechtenstein has not yet ratified or acceded to.

25. Draft acts of ratification of the following conventions have been presented to the Government for approval and subsequent referral to the Parliament:

- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997
- Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1998

26. It is planned that all these conventions will be approved by the Government in time for referral to the Parliament for ratification in the Parliament's first meeting after the summer break (11-13 September 2002).

27. With regard to the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999, the Government of Liechtenstein intends to present to the Parliament the amendments to domestic legislation necessary for full implementation of the Convention before or simultaneously with the draft act of ratification of the Convention. This shall ensure that Liechtenstein can fulfill all obligations assumed by States Parties upon entry into force for Liechtenstein. Preparations in this regard are underway. The planned modifications of the Liechtenstein legal framework are intended to be circulated to interested parties for consultation. Upon evaluation of the results of the consultation, the Government and the Parliament should be able to discuss the draft law in the second half of 2002. The goal remains ratification by the end of 2002 at the latest.

Sub-Para 3 (e):
Have the crimes set forth in the relevant international legal instruments relating to terrorism to which Liechtenstein is a party been included as extraditable offences in the bilateral treaties which Liechtenstein has concluded with other countries, as provided for in those instruments?

Please elaborate on the practical implications of Liechtenstein's interpretative declarations to the Convention on the Prevention and Punishment of Crimes against International Protected Persons, including Diplomatic Agents and to the International Convention against Taking of Hostages. Please indicate whether they restrict in any way the full implementation of these two international conventions.

28. The bilateral agreements listed under subparagraph 3(c) supplement existing multilateral treaties. The provisions of the multilateral agreements therefore provide the basis for the bilateral agreements. This is particularly true with respect to the definitions of crimes encompassed by the treaties.

29. Liechtenstein made the two interpretive declarations on the grounds that the two conventions do not refer to applicable limitations in domestic law regarding the information exchange contemplated by the conventions. Liechtenstein law does not allow information exchange regarding pure tax offenses. For reasons of legal clarity, Liechtenstein therefore made the following declaration when ratifying the two conventions: "The Principality of Liechtenstein construes articles 4 and 5, paragraph 1 of the Convention to mean that the Principality of Liechtenstein undertakes to fulfil the obligations contained therein under the conditions laid down in its domestic legislation."

30. The lack of reference to domestic law has apparently also caused problems for other States; this becomes apparent in the inclusion of the reference in the corresponding provision of the International Convention for the Suppression of Terrorist Bombings concluded at a later stage. According to Article 15(b) of this convention, "States Parties shall cooperate in the prevention of the offences in article 2, particularly by exchanging accurate and verified information in accordance with their national law, and coordinating administrative and

other measures taken as appropriate to prevent the commission of offences as set forth in article 2."

31. In practice, the two declarations have no influence on the expeditious provision of legal assistance. If the request does not exclusively concern a pure tax offence, and there is therefore a connection with a crime covered by the conventions, the conventions are applied fully.

Sub-Para 3 (g):

According to paragraphs 53 and 72 of Liechtenstein's report, "Article 14 of the Liechtenstein Law on mutual legal assistance provides that extradition is permissible for criminal acts based on political motivations or goals, if the criminal character outweighs the political character, taking into consideration all circumstances of the individual case". Please clarify the legal effect of this provision of the Liechtenstein law on mutual legal assistance in view of sub-para 3 (g) of the Resolution which requires States to ensure that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists.

32. If the claim is made on appeal that extradition of the accused person present in Liechtenstein is impermissible for political reasons, the courts shall decide the matter. Such appeals have been made only very rarely in the past and are unknown to date under the new Law on Mutual Legal Assistance. In the past, courts have applied the same principle as in other countries (e.g., Switzerland), according to which relative and absolute political offenses are to be distinguished. Only in cases of absolute political offenses will no legal assistance be rendered. No such cases have ever occurred. An appeal concerning a political offense would not be successful in the case of terrorist acts, since such acts can by definition never be an absolute political offense. Therefore, legal assistance would be rendered.

Sub-Para 4:
Has Liechtenstein addressed any of the concerns expressed in paragraph 4 of the resolution?

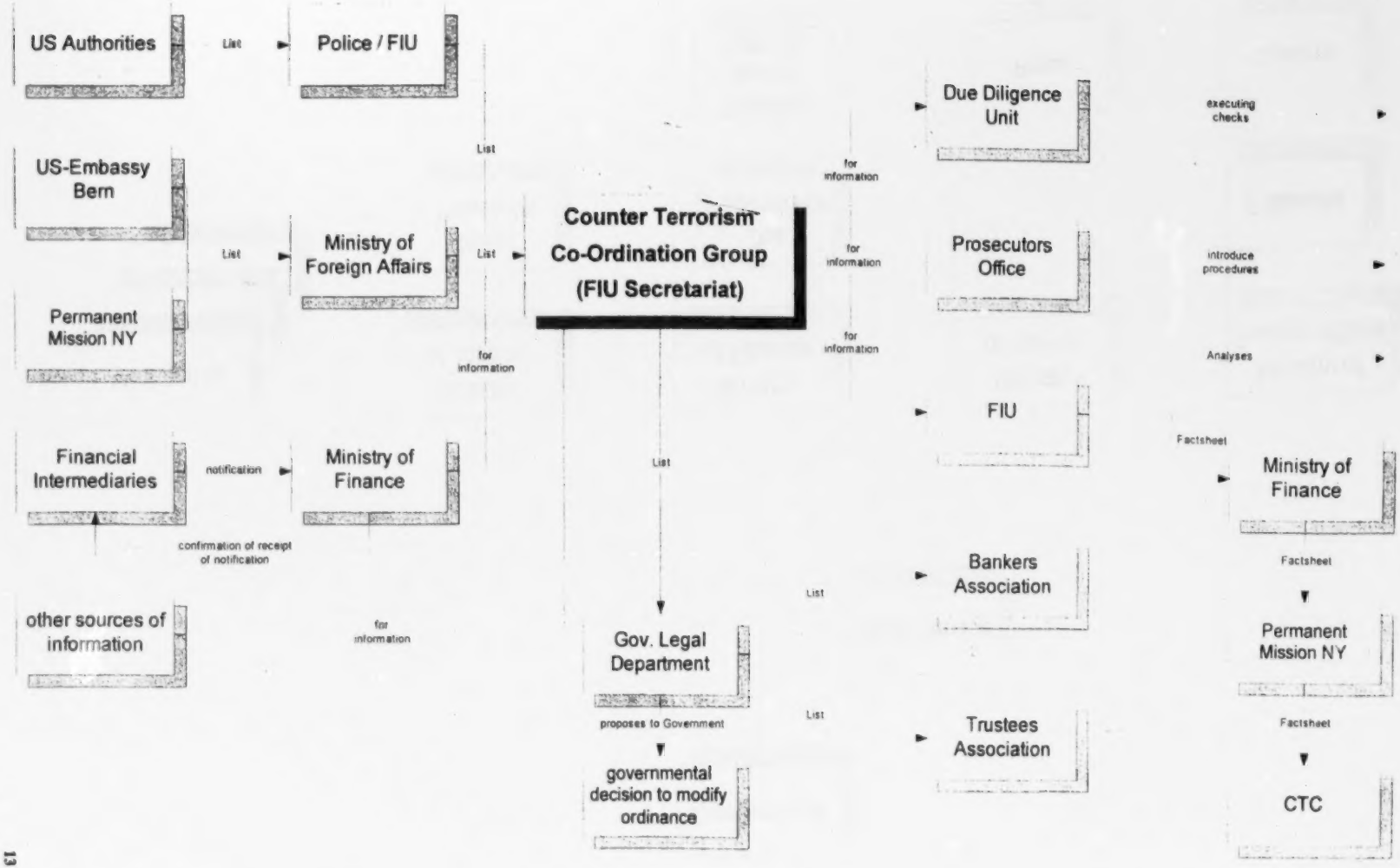
Could Liechtenstein please provide an organisational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contribution to compliance with the resolution.

33. Liechtenstein has itself taken on the task of fighting money laundering and organized crime preventatively, in order to keep its financial center clean and to deny a financial basis to international terrorism. The requisite measures have largely been established; it is however imperative to adapt them to the ongoing needs and always to commit to the highest standards. International cooperation is indispensable for Liechtenstein in combating terrorism, money laundering, and organized crime. An example of Liechtenstein's engagement is its organization of the 4th Typologies Seminar of the PC-R-EV (Council of Europe, FATF-Style Regional Body) from 9 to 11 April 2002, in which over 80 experts from around 50 different European States as well as the United States of America participated. An exchange of best practices took place in the areas of combating money laundering and financing of terrorism.

34. In the framework of strengthened regional cooperation, Liechtenstein has concluded a treaty with its neighboring countries Switzerland and Austria which entered into force on 1 July 2001 (LGBl 2002 Nr. 122). The objective of the treaty is to cooperate for the purpose of fulfilling mutual security interests, to further develop close cooperation among police and border police, and to counter transboundary threats and international crime effectively by means of a cooperative security system.

See enclosures for the second part of the question.

# Organisational Chart Counter Terrorism Co-Ordination Group



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